



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 112 3210]

CVS Caremark Corporation; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before February 13, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "CVS Caremark, File No. 112 3210" on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/cvscaremarkcorpconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lisa Weintraub Schifferle (202-326-3377) or Meredyth Smith Andrus (202-326-2863), Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 12, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 6, 2012. Write "CVS Caremark, File No. 112 3210" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include

any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at

<https://ftcpublic.commentworks.com/ftc/cvscaremarkcorpcconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “CVS Caremark, File No. 112 3210” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW,

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 13, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from CVS Caremark Corporation ("CVSC").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

CVSC is a pharmacy services company that, among other things, markets and sells Medicare drug plans and Medicare Part D drugs. CVSC currently owns multiple subsidiaries, including RxAmerica, that offer Medicare Part D prescription drug plans. Medicare Part D is a prescription drug benefit for consumers with Medicare coverage, primarily seniors and persons with disabilities. To obtain Part D benefits, beneficiaries must enroll in a Medicare drug plan administered by an insurer or other private company approved by the Centers for Medicare & Medicaid Services ("CMS"). Beneficiaries can shop for a Medicare drug plan by looking up

plan benefits and drug costs on a provider's website, by going onto CMS' Medicare website and using the web-based tool known as Plan Finder, or by visiting other third-party websites where such information is posted. Once enrolled, beneficiaries generally have cost sharing obligations until the total cost of their drugs reaches what is known as the coverage gap or "donut hole," at which point the beneficiary pays the full cost of the drugs.

The Commission's complaint alleges that CVSC, through its subsidiary RxAmerica, violated Section 5 of the FTC Act by misrepresenting that the prices of covered Medicare Part D prescription drugs, as posted on Plan Finder and on the websites of RxAmerica and other third parties from approximately 2007 until the end of 2008, were accurate estimates of the prices that beneficiaries would pay for those drugs at CVS and Walgreens. Rather, the prices charged to RxAmerica beneficiaries who purchased their covered Part D generic drugs from CVS Pharmacy or Walgreens during the relevant time period were significantly higher – in some cases as much as ten times higher – than the prices posted on those websites. As a result of this pricing discrepancy, many RxAmerica beneficiaries using CVS Pharmacy and Walgreens stores ran through their benefits coverage at faster rates than they would have based on the posted prices. Many beneficiaries, therefore, unexpectedly entered the donut hole and became responsible for the total cost of their prescription drugs, with no opportunity to change plans until the next calendar year.

To remedy the violations charged and to prevent CVSC from engaging in the future in practices similar to those alleged in the complaint, the proposed order contains injunctive provisions and a consumer redress program.

Section I of the proposed order prohibits CVSC from misrepresenting the price or cost of Medicare Part D prescription drugs, or other prices or costs associated with Medicare Part D

prescription drug plans.

Section II of the proposed order requires CVSC, within five (5) days of the date the order becomes final, to pay the Commission \$5 million for consumer redress and administrative costs.

This provision specifies that the Commission may apply any remaining funds after redress is completed for such other equitable relief as it determines to be reasonably related to CVSC's practices alleged in the complaint. Any remaining funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Section III of the proposed consent order requires CVSC to produce certain information necessary for the Commission to administer consumer redress.

Sections IV through VIII of the proposed order are reporting and compliance provisions. Section IV requires CVSC to retain documents relating to its compliance with the order for a five (5) year period. Section V requires dissemination of the order now and in the future to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order. It also requires CVSC to secure a signed and dated statement acknowledging receipt of the order from all persons who receive a copy of the order pursuant to Section V. Section VI ensures notification to the Commission of changes in corporate status. Section VII mandates that CVSC submit a compliance report to the Commission within sixty (60) days, and periodically thereafter as requested. Section VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

[FR Doc. 2012-876 Filed 01/18/2012 at 8:45 am; Publication Date: 01/19/2012]